

§ 147.108

health plans in accordance with § 147.140.

[78 FR 13437, Feb. 27, 2013, as amended at 78 FR 65092, Oct. 30, 2013; 79 FR 30339, May 27, 2014; 79 FR 42985, July 24, 2014; 79 FR 53004, Sept. 5, 2014; 80 FR 10862, Feb. 27, 2015]

§ 147.108 Prohibition of preexisting condition exclusions.

(a) *In general.* A group health plan, or a health insurance issuer offering group or individual health insurance coverage, may not impose any preexisting condition exclusion (as defined in § 144.103 of this subchapter).

(b) *Examples.* The rules of paragraph (a) of this section are illustrated by the following examples (for additional examples illustrating the definition of a preexisting condition exclusion, see § 146.111(a)(2) of this subchapter):

Example 1. (i) *Facts.* A group health plan provides benefits solely through an insurance policy offered by Issuer P. At the expiration of the policy, the plan switches coverage to a policy offered by Issuer N. N's policy excludes benefits for oral surgery required as a result of a traumatic injury if the injury occurred before the effective date of coverage under the policy.

(ii) *Conclusion.* In this *Example 1*, the exclusion of benefits for oral surgery required as a result of a traumatic injury if the injury occurred before the effective date of coverage is a preexisting condition exclusion because it operates to exclude benefits for a condition based on the fact that the condition was present before the effective date of coverage under the policy. Therefore, such an exclusion is prohibited.

Example 2. (i) *Facts.* Individual C applies for individual health insurance coverage with Issuer M. M denies C's application for coverage because a pre-enrollment physical revealed that C has type 2 diabetes.

(ii) *Conclusion.* See *Example 2* in § 146.111(a)(2) of this subchapter for a conclusion that M's denial of C's application for coverage is a preexisting condition exclusion because a denial of an application for coverage based on the fact that a condition was present before the date of denial is an exclusion of benefits based on a preexisting condition.

(c) *Allowable screenings to determine eligibility for alternative coverage in the individual market—(1) In general.* (i) A health insurance issuer offering individual health insurance coverage may screen applicants for eligibility for alternative coverage options before offering a child-only policy if—

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(A) The practice is permitted under State law;

(B) The screening applies to all child-only applicants, regardless of health status; and

(C) The alternative coverage options include options for which healthy children would potentially be eligible (*e.g.*, Children's Health Insurance Program (CHIP) or group health insurance).

(ii) An issuer must provide such coverage to an applicant effective on the first date that a child-only policy would have been effective had the applicant not been screened for an alternative coverage option, as provided by State law. A State may impose a reasonable time limit by when an issuer would have to enroll a child regardless of pending applications for other coverage.

(2) *Restrictions.* A health insurance issuer offering individual health insurance coverage may screen applicants for eligibility for alternative coverage provided that:

(i) The screening process does not by its operation significantly delay enrollment or artificially engineer eligibility of a child for a program targeted to individuals with a pre-existing condition;

(ii) The screening process is not applied to offers of dependent coverage for children; or

(ii) The issuer does not consider whether an applicant is eligible for, or is provided medical assistance under, Medicaid in making enrollment decisions, as provided under 42 U.S.C. 1396a (25)(G).

(d) *Applicability date.* The provisions of this section are applicable to group health plans and health insurance issuers for plan years (in the individual market, policy years) beginning on or after January 1, 2017. Until the applicability date for this regulation, plans and issuers are required to continue to comply with the corresponding sections of 45 CFR parts 144, 146 and 147, contained in the 45 CFR, parts 1 to 199, edition revised as of October 1, 2015.

[80 FR 72274, Nov. 18, 2015]

EDITORIAL NOTE: At 80 FR 72284, Nov. 18, 2015, § 147.108 was revised to include two paragraphs (c)(2)(ii).